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TESTIMONY  
BEFORE THE PROBATE CONSERVATORSHIP TASK FORCE  
JUDICIAL COUNCIL OF CALIFORNIA

PUBLIC HEARING  
IMPROVING THE MANAGEMENT AND OVERSIGHT OF PROBATE  
CONSERVATORSHIP CASES IN CALIFORNIA TRIAL COURTS

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455 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA  
MARCH 24, 2006

On behalf of the California State Association of Public Administrators, Public Guardians, and Public Conservators, I would like to thank Justice Boren, Chair, and the other distinguished members of the Probate Conservatorship Task Force for this opportunity to offer testimony on how probate conservatorship might be improved.

By way of introduction, I want to broaden the scope and increase the depth of our vision. It is myopic to believe that the problems with conservatorship are limited to the problems with the law. In every aspect of life, it is important to see what *is* – what truly *is*. We must remember there is no positive resolution without clear perception.

As the legislative chair of the California State Association of Public Administrators, Public Guardians, and Public Conservators, I am here to speak about our perception of the overall probate conservatorship issues.

As identified by Public Guardians and Public Conservators, the first issue is the enactment of law. Too frequently, local practices and accommodations significantly depart from the law. This point will be further mentioned when responding to the issues identified by the Task Force.

The second issue is the power struggles within each county. For example: the Public Guardian's Office is generally subordinated under agencies such as Health, Mental Health, and Social Services. In these situations, the Public Guardian's Office is usually drastically underfunded, understaffed and its voice is rarely heard.

The third issue is that of character. Heraclitus once said, "A man's character in his fate." The fate of the conservatee largely rest in the character of the conservator. Without good character, there is only disaster.

There are other issues which could be listed. However, the point is to look closely into all relevant matters- not just the law. See everything as it *is*.

**Whether there are sufficient due process safeguards to ensure the rights and interests of conservatees are being protected.**

In part, this goes to the enactment of law. The concern is that each party fulfill its statutory role. This has been a significant problem in some counties.

Also, there needs to be more monitoring by the court through the court investigator's role. This matter will be further discussed.

**Whether court review of conservatorships should be conducted more frequently, and what the focus of these reviews should be.**

The court should send out the court investigator more frequently to determine if there is sufficient reason for a hearing. The court investigator would carry out a comprehensive investigation regarding the conservatee's overall welfare as well as determine the appropriateness of the relationship between the conservator and the conservatee. The increased frequency of these investigations would be determined by such factors as "need" and "funding".

The foregoing would be preferable to a change in the law that would automatically require additional hearings.

**The appropriate role for court investigators and other court personnel in preventing and deterring abuse.**

As earlier identified, the increased role of the court investigator is critical in preventing and deterring abuse. Accordingly, there is legislation needed which includes additional funding to increase the role of the court investigator.

**Whether court personnel have the requisite education and training to properly perform their jobs.**

In terms of court personnel, there is some major variability in their properly performing their jobs. It appears to be a matter of developing and maintaining high performance standards. This would most likely require additional funding for increased staffing and increased performance monitoring.

### **How courts can more effectively review accountings.**

The forgoing matter regarding court personnel job performance should be noted. Also, as earlier mentioned, the increased role of the court investigator should provide needed assistance. This should result in a more timely reporting of “potential” and actual estate management problems.

### **The appropriate role of the courts in providing assistance to self-represented litigants.**

It appears this is more of a legal matter for an attorney to answer. Nevertheless, a couple of brief comments will be made. Given the serious capacity issues usually involved in probate conservatorship proceedings, the appropriateness of self-represented litigants is in grave doubt. Also, given the Task Force’s topic of inquiry, it is vital that conservatees have sound legal representation.

Additionally, there are a couple of recommendations:

Legislation is needed for Public Guardians to be able to obtain medical and financial information when carrying out a probate conservatorship or guardianship investigation. This would allow for a stronger basis on which to determine the appropriateness of a conservatorship or guardianship as well as a suitable alternative. Hopefully, this matter can be further explored with the Task Force.

The Task Force may want to recommend more of a scientific study of conservatorship rather than the usual anecdotal accounts. For example, a longitudinal study of conservatorship carried out by a social scientist- who has no ax to grind.

Before closing, it should be emphasized that what we don’t need is unfunded mandates. We don’t want to create false expectations and unnecessary system failure. Imposition of additional mandates without funding is delusional.

Remember, we must see the overall picture in order to take effective action.

## RICHARD L. NARVER

**Current Employment:** Yolo County Assistant Public Guardian / Administrator – 5/95 to present. California State Association of Public Administrators, Public Guardians, and Public Conservators. (PA/ PG/PC): Executive Board Member, Past President, Legislative Chair at present.

**Previous Employment:** Santa Cruz County: Public Guardian and Public Conservator 9-86 to 1/95. Sacramento County: Sacramento County Public Guardian's Office- Chief of Conservatorship Division – 6/70 to 9-/86. Sacramento County Superior Court- Assistant Mental Health Counselor- 1/68 to 6/70.

**Membership and Legislative Experience:** Alzheimer's Association, Santa Cruz Chapter: Vice President- 11/90 to 10/93, Public Policy Chair – 11/91 to 11/94, President- 10/93 to 11/94. Alzheimer's Disease and Related Disorders Association – California State Council: Delegate- 11/91 to 5/95, Legislative Chair – 11/92 to 5/95. Senator Henry J. Mello's Work-Study Committee Regarding Conservatorship for the Elderly: Past member of committee, assisted with Dementia Conservatorship Legislation. Assemblywoman Helen Thomson and Assemblyman Joe Canciamilla: Assisted in developing and passing probate conservatorship legislation.

**Education and Part time Related Employment:** B.A. and M.A. – California State University at Sacramento (CSUS) and part-time psychology instructor at CSUS.